



FEDERAL ELECTION COMMISSION
WASHINGTON, D C 20463

August 3, 1999

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

William J. Olson, Esq.
8180 Greensboro Dr.
Suite 1070
McLean, VA 22102-3823

RE: MUR 4736
(Including allegations formerly part of MUR 4783)
MUR 4783
Citizens United Political Victory Fund
and Kevin Allen, as treasurer

Dear Mr. Olson:

On August 10, 1998, the Commission notified Citizens United Political Victory Fund and Kevin Allen, as treasurer, (referred to collectively hereinafter as "the Committee") of a complaint designated as MUR 4783, alleging violations of the Act. In considering MUR 4783, the Commission found reason to believe that the Committee violated 2 U.S.C. § 434 and § 441f, and decided to sever all allegations against the Committee from MUR 4783 and to consolidate those allegations with related allegations in MUR 4736. In considering MUR 4736, the Commission found additional basis for reason to believe that the Committee violated 2 U.S.C. § 434 and § 441f. The Factual and Legal Analysis, which formed a basis for the Commission's findings in MUR 4736 (including those consolidated from MUR 4783) is attached for your information. Following the severance of the allegations which have been consolidated into MUR 4736, the Committee is no longer a respondent in MUR 4783.

The facts underlying the Commission's findings in MUR 4736 (including the allegations that previously were part of MUR 4783) are substantially similar, and in many respects identical, to the factual basis for the Commission's June 1998 findings against the Committee in MURs 4568, 4633 and 4634. Due to the related nature of these MURs, the Commission has decided to investigate MUR 4736 concurrently with its investigation in MURs 4568, 4633 and 4634. Future communications regarding this MUR will refer to MURs 4568, 4633, 4634 and 4736 as being part of a single investigation.

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Citizens United Political Victory Fund
and Kevin Allen, as treasurer
MURs 4783 and 4736
Page 2

This Office has considered and will treat the Committee's responses and submissions in MURs 4568, 4633, 4634 and 4783 as if they also had been filed in MUR 4736. You also may submit additional factual or legal materials that you believe are relevant to the Commission's consideration of this matter. Please submit such additional materials to the General Counsel's Office within 15 days of receipt of this letter. Where appropriate, statements should be submitted under oath. In the absence of additional information, the Commission may find probable cause to believe that a violation has occurred and proceed with conciliation.

If you are interested in pursuing pre-probable cause conciliation, you should so request in writing. See 11 C.F.R. § 111.18(d). Upon receipt of the request, the Office of the General Counsel will make recommendations to the Commission either proposing an agreement in settlement of the matter or recommending that pre-probable cause conciliation not be pursued. The Office of the General Counsel may recommend that pre-probable cause conciliation not be entered into at this time so that it may complete its investigation of the matter. Further, the Commission will not entertain requests for pre-probable cause conciliation after briefs on probable cause have been mailed to the respondent.

This matter will remain confidential in accordance with 2 U.S.C. §§ 437g(a)(4)(B) and 437g(a)(12)(A) unless you notify the Commission in writing that you wish the matter to be made public.

If you have any questions, please contact Mark Shonkwiler, the attorney assigned to this matter, at (202) 694-1650.

Sincerely,



Scott E. Thomas
Chairman

Enclosure:
Factual and Legal Analysis

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FEDERAL ELECTION COMMISSION
FACTUAL AND LEGAL ANALYSIS

RESPONDENTS: Citizens United Political Victory
Fund and Kevin Allen, as treasurer

MUR: 4736¹

I. GENERATION OF THE MATTERS

The respondent was added to MUR 4736, which relates to the involvement of Triad Management Services, Inc. ("Triad") in various 1996 congressional elections, on the basis of information ascertained by the Commission in the normal course of its supervisory responsibilities. *See* 2 U.S.C. § 437g(a)(2).

MUR 4783 was generated by a complaint filed by Peter Cloeren. *See* 2 U.S.C. § 437g(a)(1). The Federal Election Commission ("Commission") subsequently determined that it would sever the allegations involving the respondents listed above from MUR 4783 and consolidate those allegations with similar allegations in MUR 4736.

The Commission currently is investigating similar allegations as part of an ongoing investigation in MURs 4568, 4633 and 4634. The Commission determined that it will investigate MUR 4736 jointly with MURs 4568, 4633 and MUR 4634.

II. FACTUAL AND LEGAL ANALYSIS

The Commission believes that the specific incidents recounted in the subject MURs are most appropriately viewed in the context of Triad's involvement in the 1996 election cycle. During the latter part of 1996 and throughout 1997, there were a number

¹ This MUR includes certain allegations that were severed from MUR 4783.

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of press accounts concerning the activities of Triad in connection with these federal elections. In summary, it was reported that Triad came to the aid of a substantial number of Republican campaigns, including the Sam Brownback for Senate Committee and the Brian Babin for Congress Committee, after learning of their needs through a process it referred to as a "political audit."

The materials assembled thus far indicate that Triad's assistance may have encompassed setting up a plan to arrange contributions from certain individuals, who already had made the maximum legal contribution to certain federal candidates, to various political action committees ("PACs"). These PACs reportedly then gave identical or nearly identical amounts back to the original contributor's preferred candidate.

The Commission has found reason to believe that during the 1996 election cycle, Citizens United Political Victory Fund and Kevin Allen, as treasurer, ("respondents" or "Citizens United") may have permitted the name of the PAC to be used by John and Ruth Stauffer ("the Stauffers") for the purpose of making a contribution to the Sam Brownback for U.S. Senate committee in the name of another. The Commission also has found reason to believe that during the 1996 election cycle, Citizens United Political Victory Fund and Kevin Allen, as treasurer, ("respondents") permitted the name of the PAC to be used by Peter Cloeren for the purpose of making a contribution to the Brian Babin for Congress Committee in the name of another. Further, the Commission has found reason to believe that the respondents may have failed to accurately report the nature of its receipts from the Stauffers and Peter Cloeren, and also failed to accurately report the

contributions that it made to the Sam Brownback for U.S. Senate and the Brian Babin for Congress campaigns.

A. THE APPLICABLE LAW

The Federal Election Campaign Act of 1971, as amended, ("the Act") prohibits persons from allowing their names to be used to effect a contribution in the name of another. 2 U.S.C. § 441f. The Act also requires any organization that qualifies as a political committee, including an unconnected committee, to file periodic reports of receipts and disbursements with the Commission. 2 U.S.C. § 434.

B. FACTS

1. Triad

Triad appears to have been created during the 1996 election cycle. Triad reportedly was founded by Carolyn Malenick, who previously had worked as a fundraiser for various political groups and campaigns, including, *inter alia*, Oliver North's 1994 bid for the US Senate. At different times, Ms. Malenick reportedly has described herself as the President and Chief Executive Officer of Triad; the Director of Triad; and the Chief Operating Officer of Triad. *See, e.g.*, 11/19/97 Carolyn Malenick letter-to-the-editor of the Dayton Daily News.

Triad advertises itself as a political consulting firm that provides services to donors interested in making political contributions to conservative candidates, campaigns, issues and projects. Triad attempts to distinguish itself from other political consulting firms by claiming that it only works for donors, not for candidates or campaigns..

Press accounts indicate that Triad representatives have described the company as operating in a manner akin to a stock brokerage for conservative political donors,

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providing research and analysis of upcoming elections, and dispensing advice on how to maximize the impact of political contributions. *See* 9/28/96 National Journal article. In sum, Triad reportedly seeks to give wealthy contributors advice on how to get the “biggest bang for the buck” with their contributions by telling them which conservative candidates look like winners and which ones need help. *Id.*

2. Triad’s Political Audits

At least one news account has reported that Triad personnel and consultants performed what Triad labeled as “political audits” on approximately 250 campaigns during the 1996 election cycle. *See* 10/29/97 Minneapolis Star-Tribune article. This news account also reported that a Triad spokesperson described the purpose of these political audits, many of which reportedly included meetings with the candidate or senior campaign officials, as the identification of “races where donors could support candidates who shared their ideological views and had a viable campaign.” *Id.*

The political audit reports released as exhibits to the Final Report on Investigation of Illegal or Improper Activities in Connection with 1996 Federal Election Campaigns by the Senate Committee on Governmental Affairs (“Senate Report”) suggest that Triad conducted a standardized review of congressional campaigns. The first point reflected in many of these audit reports was a date on which a Triad representative met with someone from the campaign to obtain the information contained in the audit. Most of the audit reports included as Exhibits to the Senate Report followed a standard format discussing some or all of the topics listed below.

FORMAT OF TRIAD "POLITICAL AUDIT" REPORT

- I. Finances - (assessment of planned expenditures, current cash-on-hand and possible fundraising shortfalls)
- II. Polling - (review of polling trends in race)
- III. Key Issues - (list of issues considered critical to the campaign's success)
- IV. Needs - (campaign's self-identification of specific nonmonetary needs; e.g., big name speaker to attract supporters to rally)

General Observations (Comments on campaign organizations)

Good Points about Campaign - (Subjective analysis of strengths)

Bad Points about Campaign - (Subjective analysis of weaknesses)

Prospect for Victory - (Assessment of Candidate's Chance to Win)

Action - (Follow-up Actions for Triad personnel)

Conclusion (Recommendation on support for campaign)

See, e.g., Triad political audit reports attached to Senate Report.

Indeed, it appears that as part of these audits, Triad met with representatives from each of the campaigns specifically addressed by the MURs, including the Sam Brownback for U.S. Senate and the Brian Babin for Congress committees, to discuss the specific strengths and weaknesses of their campaign, and to learn what help the campaign needed to successfully compete in the upcoming election. Information obtained by the Commission suggests that in some instances, after completing an audit, Triad may have had ongoing contacts with some campaigns to assess their developing prospects and needs.

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After completing its political audit on a campaign, including the Sam Brownback for U.S. Senate and the Brian Babin for Congress committees, Triad reportedly provided the results of its research and analysis to prospective political donors. It appears that rather than waiting for donors to make specific requests for information about a particular campaign, Triad periodically sent general "Fax Alerts" to prospective donors which extolled the virtues of various campaigns and provided Triad's recommendations for political contributions. Based on documents attached as exhibits to the Senate reports, it appears that Triad sent no fewer than sixty (60) separate fax alerts between February and December 1996. *See* Triad Fax Alert Index. Further, while the Commission currently lacks information as to how many potential contributors received each Triad Fax Alert, one of the fax alerts in the middle of the known range (No. 28 out of 60) notes that "over 160 businessmen and women have been added to the Fax Alert in the last 18 months." *See* 10/10/96 Triad Fax Alert titled "Countdown to Election Day: 27 Days."

3. **Triad's Fundraising Efforts**

It appears from the text of the audits attached as exhibits to the Senate report and from examples of the solicitations set forth in what Triad called "Fax Alerts," that the audits were also a source of information based on which Triad decided where to focus its fundraising resources. The Triad Fax Alerts urge the recipients to make contributions and otherwise support various Triad recommended candidates in both the primary and general elections. *See* Triad Fax Alerts attached to Senate Report. The Sam Brownback for U.S. Senate and the Brian Babin for Congress committees are mentioned in several of the Triad Fax Alerts.

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Some of the audit reports refer to what appears to have been a practice Triad had of soliciting donors who already had made the maximum legal contribution to particular candidates Triad was seeking to support. In addition, certain of these reports seem to indicate that Triad may have tried to interest such donors in making contributions to certain selected political action committees ("PACs"), which made subsequent, and often identical, contributions to the original donor's preferred candidate(s).²

For example, an excerpt from the Triad audit report of the campaign of Pete Sessions, which is attached to the Senate Minority report, states: "[b]oth Sessions and [the campaign manager] clearly understand the Triad concept and will have a list of their maxed out donors for our inspection as soon as there is a call from Washington." See excerpt from Pete Sessions audit report. Another audit report states that "Ed Merritt has a number of maxed out donors who might want to be introduced to Triad. Towards that end, I have recommended over the telephone to [a Triad employee] that we check out their receptance." See Ed Merritt audit report. In what appears to be reference to the same practice, the Triad audit report on the Sam Brownback for US Senate campaign, notes that Triad will "[n]eed to work with potential clients that may be recommended by the Brownback campaign and with the finance chairman to ensure that Triad is properly advertised." See Brownback audit report.

² It has been reported that Ms. Malenick acknowledged that Triad would try and match donors referred to it by a candidate to PACs who were likely to support the same candidate, but denied that there was any coordination between the individual contribution to the PACs and the PAC contributions to the candidate. See October 8, 1997 Article in The Hill. Triad's advertisements seem to hint at this by stating that its "services to clients" include "[w]orking with conservative political action committees and issue organizations for efforts to maximize their separate funding sources to accomplish common objectives."

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4. **The Stauffer/Brownback Contributions**

John and Ruth Stauffer, who had already donated the maximum legal amount of money to the Sam Brownback for U.S. Senate committee, made \$32,500 in contributions to seven PACs which, within a short time, made identical or nearly identical contributions to the Brownback campaign.³

On July 5, 1996, the Citizens United Political Victory Fund received a \$5,000 check from the Stauffers via Triad. On July 18, 1996, the PAC then made a donation of \$5,000 to the candidate's campaign committee.

Name of PAC	Date of Contribution	Amount of Contribution	Date of PAC Contribution to Brownback	Amount of Contribution to Brownback
Citizens United Political Victory Fund	7/5/96	\$5000	7/18/96	\$5000

5. **The Cloeren/Babin Contributions**

The Complaint in MUR 4783 alleges that 1996 Texas congressional candidate Brian Babin ("Dr. Babin") personally solicited a \$5000 contribution to the Citizens United Political Victory Fund from the complainant, Mr. Peter Cloeren with the representation that Citizens United had agreed to make a \$5000 contribution to the Babin Committee in exchange for Mr. Cloeren's contribution to Citizens United. On October 7, 1996, Mr. Cloeren made a \$5000 contribution to Citizens United, which that group

³ John and Ruth Stauffer are the parents of Sam Brownback's wife.

⁴ The reported date of the contribution is based on the date of receipt reported by the PACs in their FEC reports.

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reported receiving on October 14, 1996. Citizens United subsequently made a \$5000 contribution to the Babin Committee on October 24, 1996.⁵

Although the Complaint does not specifically mention Triad, or its President, Carolyn Malenick, in connection with the Citizens United contribution, Mr. Cloeren provided an affidavit to investigators from the House Committee on Government Oversight in August, 1998, in which he states his understanding that Triad and Citizens United were connected, because the persons soliciting his contributions "constantly referred to Triad" while discussing both Citizens United and CR. See Cloeren Affidavit released by House Committee on Government Affairs in August 1998.

The Senate Government Affairs Committee investigation uncovered evidence that Citizens United was on a list of approximately fifteen PACs with which Triad had regular communications, and that Triad both solicited contributions to these PACs and advised these PACs concerning what candidates for federal office they should support in connection with the upcoming 1996 elections.

Citizens United's response to this Complaint in MUR 4783 acknowledges receiving the Cloeren contribution and making its own contribution to the Babin Committee, but disavows any connection between the two transactions. The Citizens United officer who decided to make the contribution to the Babin Committee claims to have been unaware of any prior representation made to Dr. Babin or Mr. Cloeren

⁵ The Complaint also alleges that in a 1998 telephone conversation with Mr. Cloeren, Babin Committee official Walter Whetsell "acknowledged that [Mr. Cloeren's] contribution to Citizens United was illegally earmarked [sic] to go to the Babin campaign." Complaint at 5. Complainant alleges that this conversation was taped by the FBI, and is in the possession of the DOJ.

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regarding the use of his contribution. Although Citizens United denies the Complaint's allegation that it agreed to make a contribution to the Babin Committee in exchange for the Cloeren contribution, it does not deny having communications with parties (e.g., Triad, Babin, etc.) regarding either the Cloeren contribution or its own willingness to make a contribution to the Babin Committee.

C. ANALYSIS

1. Stauffer/Brownback Contributions

Based on the information available at this time, the Commission found reason to believe that the Citizens United Political Victory Fund and Kevin Allen, as treasurer, may have permitted the name of the PAC to be used by the Stauffers for the purpose of making a contribution to the Sam Brownback Committee in the name of another person. By allowing the PAC's name to be so used, the respondents may have violated 2 U.S.C. § 441f. Based on the available materials, the Commission found reason to believe that the respondents violated 2 U.S.C. § 434 by failing to accurately report the nature of the PAC's receipts from the Stauffers and its contributions to the Sam Brownback for U.S. Senate committee.

There are several reasons for believing that the respondents may have violated the election law. As noted, documents attached as exhibits to the Senate reports appear to indicate that Triad had a practice of asking campaigns that Triad decided to support for lists of their "maxed out" donors. At this time there is no other explanation for the proximity in timing and similarity in amounts between the contributions to the PACs and the subsequent PAC contributions to the Brownback Committee. In addition, neither of the Stauffers had ever before contributed to the Citizens United Political Victory Fund.

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And, while the couple could have contributed up to \$5,000 each to this PAC, they limited the total aggregate contribution to the maximum amount that this PAC was entitled to, and did in fact, contribute to the Brownback committee. The data currently available appears to demonstrate that Triad had communications with both the contributors and with its recommended PAC through which the donation to the Sam Brownback for U.S. Senate passed. These communications created an opportunity for the respondent PAC to have agreed to make a contribution to a specific candidate, Sam Brownback, in an amount identical to the contribution that they received from a Triad client, in this case the candidate's in-laws, Mr. and Mr. Stauffer.

In MUR 4634, the respondents submitted a response that denied the allegation that original contributor funds that been funneled through the PAC to the recipient campaign. Notwithstanding the respondents' conclusory denials, the Commission believes that there are substantial unanswered questions regarding these contributions.

The factors outlined above caused the Commission to find reason to believe that the Citizens United Political Victory Fund and Kevin Allen, as treasurer may have violated the Federal Election Campaign Act of 1971, as amended. Specifically, the Commission found reason to believe that the respondents may have violated 2 U.S.C. § 441f by allowing the name of the PAC to be used by the Stauffers for the purpose of making contributions in the name of another. The Commission also found reason to believe that the Citizens United Political Victory Fund and Kevin Allen, as treasurer, may have violated 2 U.S.C. § 434 by failing to accurately report the nature of its receipts from the Stauffers and its own contributions to the Sam Brownback for U.S. Senate committee.

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2. Cloeren/Babin Contributions

Faced with conflicting accounts as to the existence or non-existence of arrangements for Citizens United to use the funds from the Cloeren contribution for a reciprocal contribution to the Babin Committee, the Commission believes that further investigation is warranted. The Complaint in MUR 4783 sets forth the sworn account of Peter Cloeren, a participant in the alleged scheme to make a contribution in the name of Citizens United. Further, the reports issued by recent congressional investigative committees suggest that there may have been a larger pattern of activity in which Triad arranged for certain PACs to make contributions to particular candidates based on the receipt of funds from individual contributors who already had made the maximum legal contribution to that candidate. This information suggests that Citizens United participated in this larger scheme. Finally, the timing and amount of the Cloeren contribution to Citizens United and the subsequent Citizens United contribution to the Babin Committee are consistent with and support the Complaint's allegations. When considered together, these factors support the reason to believe findings set forth below.

Based on the facts set forth above, there is reason to believe that Citizens United Political Victory Fund and Kevin Allen, as treasurer, violated 2 U.S.C. §§ 441f and 434 by allowing its name to be used in making a contribution in the name of another in connection with the \$5000 contribution to the Babin Committee and failing to accurately report the source of this contribution.